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IN THE

Supreme Court of the United States

October Term, 1954.

No. 269

ADOLPH B. SPRECKELS, JR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

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SUBJECT INDEX

PAGE

Jurisdiction 2

Questions presented for review..... 3

Statement of the case..... 5

Argument 7

INDEX TO APPENDICES

PAGE

Appendix A. Opinion of the District Court of Appeal..... 1

Appendix B. Judgment and order affirmed..... 10

Appendix C. The conviction and sentence of appellant violates the due process clause of the Fourteenth Amendment to the United States Constitution..... 11

Appendix D. The conviction and sentence of petitioner violates the due process clause of the Fourteenth Amendment to the United States Constitution..... 12

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Dolker, Estate of, 153 Cal. 652, 96 Pac. 266	9
Home Ins. Co. v. Dick, 281 U. S. 397	10
Luna, In re, 201 Cal. 405, 257 Pac. 76	7
Miller Bros. v. State of Maryland, 74 S. Ct. 535	7
People v. Defoor, 100 Cal. 150, 34 Pac. 642	8
People v. Mulholland, 16 Cal. 2d 62, 104 P. 2d 1045	7, 8
Scott v. McNeal, 154 U. S. 46, 38 L. Ed. 896	9

STATUTES

2 California Constitution Annotated (Mason), Art. VI, Sec. 5, p. 2	3, 7
2 California Constitution Annotated (Mason), Art. VI, Sec. 11, p. 51	4, 7
California Penal Code, Sec. 17, p. 7	5
California Penal Code, Sec. 240, p. 64	4
California Penal Code, Sec. 241, p. 64	5
California Penal Code, Sec. 245, p. 65	4, 5, 7
California Penal Code, Sec. 1159	3, 5, 6, 8, 9, 10
California Penal Code, Sec. 1425, p. 476	4, 7, 9
Federal Rules of Criminal Procedure, Rule 31C	10
Revised Rules of the Supreme Court of the United States, Rule 19	2
Revised Rules of the Supreme Court of the United States, Rule 21	2
United States Code Annotated, Title 28, Sec. 1257	2
United States Constitution, Fourteenth Amendment	2, 6, 9
United States Constitution, Fourteenth Amendment, Sec. 1	3

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States:

Now comes Adolph B. Spreckels Jr. and petitions for a Writ of Certiorari directed to the California District Court of Appeal, Fourth Appellate District, to review and reverse a judgment of that court affirming a judgment of the Superior Court of Orange County, California, sentencing petitioner to 30 days in the County Jail of Orange County, California, which judgment was based on a verdict of the jury finding petitioner guilty of the crime of misdemeanor to wit: "Simple Assault, a lesser offense necessarily included within the crime charged."

The opinion of the District Court of Appeal is found in 270 P. 2d 513; 125 A. C. A. 637, and a copy is set forth in Appendix A attached hereto.

JURISDICTION.

The judgment of the California District Court of Appeal affirming the judgment of the Superior Court of Orange County, California, was entered on May 25, 1954 [R. A. 39; Appendix B]. A petition for rehearing was duly filed and denied by the District Court of Appeal on June 7, 1954 [R. A. 40]. A Petition for Hearing was duly filed in the Supreme Court of California and denied without opinion on June 23, 1954 [R. S. 1].

The District Court of Appeal stayed the remittitur to permit the filing of this Petition for Writ of Certiorari by order entered on June 25, 1954 [R. A. 41].

Jurisdiction of this court is invoked under Section 1257 of Title 28, U. S. C. A., and Revised Rules 19 and 21 of this court. This petition is filed within 90 days from the date of the judgment of the District Court of Appeal.

On Appeal by petitioners to the District Court of Appeal and in his Petition for Hearing in the Supreme Court of California, it was urged that the conviction and sentence of petitioner violates the due process clause of the Fourteenth Amendment to the United States Constitution.

[R. A. is intended as a reference to the record of the District Court of Appeal of California. The record of the Supreme Court of California is referred to as R. S.]

QUESTIONS PRESENTED FOR REVIEW.

Was the conviction and sentence of petitioner for a misdemeanor by the Superior Court of Orange County, California, which court had no jurisdiction over such misdemeanor, a violation of the due process clause in the Fourteenth Amendment to the Constitution of the United States?

Could the legislature of California, by enacting Section 1159 of the Penal Code, which permits a court or jury to find a defendant guilty of any offense which is necessarily included in the crime charged, confer jurisdiction to the Superior Court over a necessarily included misdemeanor in view of the California Constitutional provisions depriving Superior Courts of jurisdiction over misdemeanors?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED: UNITED STATES CONSTITUTION, 14TH AMENDMENT, SECTION 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CALIFORNIA CONSTITUTION ANNOTATED, MASON, VOLUME 2, SECTION 5 OF ARTICLE VI, PAGE 2:

> ". . . the Superior Courts shall have original jurisdiction . . . in all criminal cases amounting to a felony and in all cases of misdemeanor not otherwise provided for . . ."

CALIFORNIA CONSTITUTION ANNOTATED, MASON, VOLUME 2, SECTION 11 OF ARTICLE VI, PAGE 51:

"The legislature shall provide by general law for the regulation, government and procedure and *jurisdiction* of municipal courts, and of justice courts, and shall fix by law the powers, duties and responsibilities of such courts and of the judges thereof."

CALIFORNIA PENAL CODE, SECTION 1425, PAGE 476.

"The Justice Courts have jurisdiction as follows:

"1. Justice Courts of Class A shall have jurisdiction exclusively of that of any municipal court established in the County, in all criminal cases amounting to misdemeanor only, except those of which the juvenile court is given original jurisdiction.

"2. Justice Courts of Class B shall have jurisdiction in all criminal cases amounting to misdemeanor only punishable by fine not exceeding One Thousand Dollars ($1,000.00), or imprisonment not exceeding six months, or by both such fine and imprisonment."

CALIFORNIA PENAL CODE, SECTION 245, PAGE 65:

"Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by means of force likely to produce great bodily injury, is punishable by imprisonment in the State prison not exceeding ten years or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment."

CALIFORNIA PENAL CODE, SECTION 240, PAGE 64:

"An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

. . .

CALIFORNIA PENAL CODE, SECTION 241, PAGE 64:

"An assault is punishable by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months or by both."

CALIFORNIA PENAL CODE, SECTION 17, PAGE 7.

"A felony is a crime which is punishable with death or by imprisonment in the State prison. Every other crime is a misdemeanor."

CALIFORNIA PENAL CODE, SECTION 1159:

"The jury, or the judge, if a jury trial is waived, may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or an attempt to commit the offense.

STATEMENT OF THE CASE.

The information filed in the Superior Court charged petitioner with a violation of Section 245 of the Penal Code as follows, that he

"on or about the 20th day of August, 1953, at and in the County of Orange, did wilfully, unlawfully and feloniously assault Kay Williams Spreckels, a human being, by means of force likely to produce great bodily injury." [R. A. 52, 53.]

Section 245 is a felony in view of the punishment provided. See: Sec. 17 of the Penal Code.

At the close of all the evidence, the trial court at the request of the district attorney, instructed the jury to the effect that they might find the defendant guilty of simple assault [R. A. 151, 152]. The jury returned a verdict finding petitioner "guilty of the crime of misdemeanor to

wit: Simple assault, a lesser offense necessarily included within the crime charged" [R. A. 71].

Based on the jury's verdict, the court sentenced petitioner to serve 30 days in the Orange County jail [R. A. 73]. Petitioner was released on bail, and appealed to the District Court of Appeal of California, 4th District.

In his opening brief filed in the District Court of Appeal, petitioner urged that the conviction and sentence of petitioner was a violation of the due process clause of the Fourteenth Amendment; that Section 1159 of the Penal Code could not circumvent due process of law by permitting a conviction in the Superior Court of a misdemeanor when such court had no jurisdiction over misdemeanors. [R. A. 15 A, 17; Appendix C.]

In its opinion the District Court of Appeal held that appellant's contention that his conviction and sentence violated due process of law was without merit. [R. A. 47.] Petitioner filed a petition for rehearing in the District Court of Appeal, which petition was denied.

In his Petition for Hearing in the Supreme Court of California, it was again urged that the conviction and sentence of petitioner violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution; that when the legislature enacted Section 1159 of the Penal Code, it could not circumvent the due process of law by permitting a conviction in the Superior Court, when such court had no jurisdiction over misdemeanors [R. A. 30A; Appendix D.]

The petition for hearing in the Supreme Court was denied without opinion.

The facts relating to the alleged assault are fairly stated in the opinion of the District Court of Appeal.

ARGUMENT.

Petitioner was tried in the Superior Court of Orange County, California, for a violation of Section 245 of the Penal Code, a felony, and at the request of the district attorney, ***not of petitioner,*** the trial court instructed the jury that they might find petitioner guilty of simple assault, a misdemeanor [R. A. 151, 152]. By its verdict the jury acquitted petitioner of the felony charged and found him guilty of "simple assault, a misdemeanor."

It is fundamental that due process of law requires that a trial court have jurisdiction over the crime for which a defendant is tried, found guilty and sentenced. Jurisdiction is necessary to valid judicial action. (*Miller Bros. v. State of Maryland,* 74 Sup. Ct. Rep. 535.)

The evident purpose of Section 5 of Article VI of the California Constitution was that jurisdiction of the Superior Court over misdemeanors would cease when the legislature conferred jurisdiction over misdemeanors on the inferior courts. Section 11 of Article VI of the California Constitution authorizes the legislature to provide for the regulation and *jurisdiction* of the inferior Municipal and Justice Courts. When the legislature enacted Section 1425 of the Penal Code, exclusive jurisdiction over misdemeanors was vested in the inferior courts. When Section 1425 of the Penal Code was enacted, jurisdiction over misdemeanors was "otherwise provided for" and the California Constitution itself transferred such jurisdiction from the Superior Court and vested it in the inferior courts. (*In re Luna,* 201 Cal. 405, 257 Pac. 76; *People v. Mulholland,* 16 Cal. 2d 62, 104 P. 2d 1045.)

It has been definitely held that the legislature may vest jurisdiction of misdemeanors in the inferior courts estab-

lished by the legislature within the county, the effect of which is to entirely deprive the Superior Courts of jurisdiction of all misdemeanors within the county. (*People v. Mulholland,* 16 Cal. 2d 62, 64, 104 P. 2d 1045.)

Petitioner was tried, found guilty and sentenced by the Superior Court of Orange County for a misdemeanor over which the court had no jurisdiction. If he were not charged with, nor prosecuted for simple assault, then he was convicted of a crime for which he was not tried, which would be a denial of due process of law. If he was tried, found guilty and sentenced by a court which had no jurisdiction of such crime, there was likewise a denial of due process of law.

The decision of the California District Court of Appeal is to the effect that since the Superior Court had jurisdiction of the felony charged in the information, the conviction and sentence of petitioner was valid in view of Section 1159 of the Penal Code.

The decision of the District Court of Appeal overlooks this important factor: Petitioner was charged in the information not only with a felony but also with an assault, a misdemeanor, a necessarily included offense. The situation was the same as though there were two counts in the information, one charging a felony and the other a misdemeanor. (*People v. Defoor,* 100 Cal. 150, 34 Pac. 642.)

By constitutional permission the legislature had vested exclusive jurisdiction over misdemeanors in the inferior courts of Orange County.

The judgment of the District Court of Appeal cannot be sustained under Section 1159 of the Penal Code. The legislature could not circumvent the due process of law by permitting a conviction for a misdemeanor in the

Superior Court, which had no jurisdiction over misdemeanors. The Fourteenth Amendment to the federal constitution has rendered the legislatures of the States as incompetent as Congress to enact laws which will deprive individuals of their liberty without due process.

Sections 1425 and 1159 of the Penal Code enacted by the legislature are contradictory if Section 1159 is construed to permit the Superior Court to try and convict a defendant of an included misdemeanor on an information charging a felony. Section 1425 gives the inferior courts exclusive jurisdiction over misdemeanors. Section 1159 is general in its nature and makes no reference to misdemeanors. The language of general provisions is controlled by the special provisions of the California Code sections touching the same subject matter. (*Estate of Dolker,* 153 Cal. 652, 660, 96 Pac. 266.)

Section 1159 of the Penal Code should be construed to permit a conviction of an included offense only if such included offense is a felony, when a defendant is tried in the Superior Court of California on an information or indictment charging a felony.

This court is not bound by the construction placed on Section 1159 of the California Penal Code by the District Court of Appeal. In a proceeding to review the judgment of the highest court of a state, upon the ground that the judgment was against a right claimed under the United States Constitution, *this court* is not bound by that court's construction of a statute of a state. No judgment of a court is due process of law, if rendered without jurisdiction in that Court. (*Scott v. McNeal,* 154 U. S. 46, 38 L. Ed. 896.)

Rule 31C of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A., permitting a conviction of a necessarily included offense in the crime charged, is similar to Section 1159 of the California Penal Code. However, the Federal District Court, unlike the California Superior Court, has jurisdiction over both felonies and misdemeanors.

It may be urged that the federal question involved was not raised in the trial court. The only place it could have first been raised would have been on a motion for new trial. It was raised in the District Court of Appeal and treated as properly raised. It was also raised in the Petition for Hearing in the Supreme Court of California. Under these circumstances, it was immaterial that the Federal question was not raised in the trial court (*Home Ins. Co. v. Dick*, 281 U. S. 397).

We submit that the judgment of the California District Court of Appeal, affirming the judgment of the Superior Court of Orange County, violates the due process clause of the United States Constitution.

Respectfully submitted,

ISAAC E. FERGUSON,
Member of the Bar of the
United States Supreme Court
Counsel for Petitioner.

DANIEL SCHNABEL and
ROYAL M. GALVIN
Of Counsel.

APPENDIX A.

Opinion of the District Court of Appeal.

In the District Court of Appeal, Fourth Appellate District, State of California.

The People of the State of California, plaintiff and respondent, vs. Adolph B. Spreckels, Jr., defendant and appellant. 4th Crim. No. 965.

Filed May 25, 1954.

Appeal from a judgment of the Superior Court of Orange County and from an order denying a new trial. Robert Gardner, Judge. Affirmed.

Daniel Schnabel and Royal M. Galvin. George C. Bliss of Counsel, for appellant.

Edmund G. Brown, Attorney General and Norman H. Sokolow, Deputy Attorney General, for respondent.

Defendant was charged with the crime of Assault by Means of Force Likely to Produce Great Bodily Injury, a felony (Penal Code, Sec. 245), committed upon Kay Williams Spreckels on or about August 20, 1953. A jury trial was had which resulted in a verdict finding the defendant "Guilty of the crime of Misdemeanor, to wit, Simple Assault, a lesser offense necessarily included within the crime charged." Defendant's motion for a new trial and application for probation were denied. Judgment was rendered that the defendant be confined in the Orange county jail for a period of thirty days, and he appeals from the judgment and order denying his motion for a new trial. His contentions on appeal are that the Superior Court had no jurisdiction to convict him of a misdemeanor; that his conviction and sentence violates the

due process clause of the Fourteenth Amendment to the United States Constitution; that the trial court erred in refusing to permit a witness (Hughes) to testify and in limiting cross-examination of the complaining witness.

The sufficiency of the evidence to sustain the verdict and judgment is not urged as a ground of appeal. However, a statement of the salient facts viewed in the light most favorable to the People (People v. Renek, 105 Cal. App. 2d 277, 281) is as follows:

Appellant and Kay Williams Spreckels were divorced. Mrs. Spreckels had custody of their two small children, wtih reasonable visitation rights granted to appellant. On August 19, 1953, Mrs. Spreckels was occupying an apartment four or five blocks distant from appellant's residence on Balboa Island in Orange county. The children were staying with appellant temporarily and Mrs. Spreckels spent the afternoon and evening of that day at his residence. At about 9:00 P. M. appellant, who appeared to be intoxicated, called Mrs. Spreckels and her mother vile names; whereupon Mrs. Spreckels threw a glass in the direction of appellant and then left the house. She returned later and told the children's nurse that she would be over to take the children home in the morning. The following day, August 20th, around 6:30 or 6:45 A. M., Mrs. Spreckels, together with a Mrs. Reed, drove to appellant's residence to get the children. They entered the house, Mrs. Spreckels picked up some of the children's toys and went upstairs to pack them in a duffle bag. She then came downstairs and saw appellant standing in the living room. He called her vile names, grabbed her by the right arm, knocked her down, pulled her by the hair of her head over to the door, kicked her, removed one of

her shoes or slippers and struck her with it several times on her head and arms. She screamed for help and lost consciousness. When she regained consciousness, she was bleeding from cuts on her forehead and arms. Doctors were called and she was taken to a hospital where she remained for a period of ten days. Her calls for help at the time of the assault were heard by neighbors and her condition shortly thereafter was observed by the doctors and others. Testimony of these witnesses corroborated her testimony as to the injuries which she had received.

Defendant testified that Mrs. Spreckels threw a glass at him; that she started after him with a slipper; that he jerked it out of her hand, shoved her and she fell backwards; that he hit her on the hand with the slipper; that when she was on the floor, he tried to roll her to the door; that "I used the slipper and hit her on the arms several times. She would try to scratch and claw me."

Much of the voluminous evidence introduced at the trial was as to the extent of the injuries suffered by Mrs. Spreckels. However, there was ample evidence to support the verdict and judgment of conviction of simple assault and the principal questions for our determination are whether the Superior Court had jurisdiction to convict appellant of a misdemeanor and whether his conviction and sentence violated the due process clause of the Fourteenth Amendment to the United States Constitution.

Section 1159 of the Penal Code provides as follows:

"The jury . . . may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense."

This section was enacted in 1872 and insofar as material here, has not been amended since its enactment.

In Ex parte Donahue, 65 Cal. 747, the defendant was charged with the offense of assault with a deadly weapon and the judgment was rendered upon a verdict of simple assault. It was there contended that the judgment was void because the court had no original jurisdiction of the offense of which the petitioner was convicted. The court held that while justices' courts were given jurisdiction in criminal cases of assault, they had no jurisdiction of the offense of assault with a deadly weapon, that being a felony under Section 245 of the Penal Code, and that the Superior Court is the only court which has jurisdiction over it; that the offense was one which necessarily included within it the offense of assault and a person accused of the greater offense may be convicted of the lesser. (Citing Section 1159 of the Penal Code.) Apparently this case has not been overruled.

In People v. Carmen, 36 Cal. 2d 768, 773, it is held that "It is the duty of the court to instruct the jury in regard to any included offense which the evidence tends to prove" (citing numerous cases), and that "It is undoubtedly the rule that, where there is any evidence from which a reasonable inference may be drawn that the crime of which the defendant was convicted was of a lesser degree . . . it is *prejudicial* error to withdraw from the jury the consideration of such evidence and confine the instructions to the crime charged."

In 13 Cal. Jur. 2d 756-757 it is said:

"The fact that a felony charge includes a lesser offense in no way affects the jurisdiction of the superior court to try and determine the cause. Nor does the fact that a

defendant is convicted of a misdemeanor that is a lesser included offense deprive the superior court of jurisdiction to pronounce judgment imposing a punishment fixed by law for the offense of which he is convicted."

In People v. Fuentes, 74 Cal. App. 2d 737, the defendant was prosecuted on the charge of assault by means of force likely to produce great bodily injury. (Penal Code, Sec. 245.) This court there held that the defendant was guilty of the crime of battery; that as battery is a crime included in the one charged, the appellate court may reduce the judgment and direct the resentence of the defendant. (Citing People v. Kelly, 208 Cal. 387, 281 P. 609; People v. Cowan, 38 Cal. App. 2d 231, 101 P. 2d 125, 135.) The crime for which the defendant was found guilty was reduced from assault by force likely to produce great bodily injury, as defined in Section 245 of the Penal Code, to battery, as defined in Section 242 of the Penal Code, with instructions to the trial court to pronounce judgment on defendant for the lesser offense.

Appellant argues that Article XI, Section 5, of the California Constitution vests the exclusive jurisdiction of felonies in the Superior Courts as well as misdemeanors not otherwise provided for by the legislature; that it has been definitely held that the legislature may vest jurisdiction of misdemeanors in the inferior courts established by the legislature within the county, the effect of which is to entirely deprive the Superior Courts of jurisdiction of all msdemeanors within the county. (Citing In re Application of Luna, 201 Cal. 405 and People v. Mulholland, 16 Cal. 2d 62, 64.) In the Luna case the petitioner was convicted in the Superior Court in the County of Los Angeles for a violation of the statute known as the Wright

Act (Stats. 1921, p. 79) (a high misdemeanor). There were two municipal courts in the county and, by statute, jurisdiction was conferred upon said courts over offenses such as that with which the defendant was charged. It was held that under the provisions of Sections 1, 5 and 13 of Article XI of the Constitution it was within the power of the legislature to confer jurisdiction on an inferior court such as a police or justice court of all misdemeanors, high and low, and such jurisdiction, when so conferred, thereby divested the Superior Court of all jurisdiction in the premises. Section 1159 of the Penal Code was not discussed by the court and the question of jurisdiction of the Superior Court over an included offense was not there involved or passed upon. In the Mulholland case, at page 64, we find the following language:

"'Article VI, section 5, of the Constitution vests the exclusive jurisdiction of all felonies in the superior courts, as well as all misdemeanors not otherwise provided for by the legislature. It has been definitely held that the legislature may vest the jurisdiction of all misdemeanors in inferior courts established by the legislature within the county, the effect of which is to entirely deprive the superior court of jurisdiction of all misdemeanors within the county. (In re Luna, 201 Cal. 405, 257 Pac. 76; In re Leave and Huggins, 99 Cal. App. 645, 279 Pac. 157.)'"

There is nothing in the language used in the cited constitutional provision prohibiting the legislature from providing, as it did in Section 1159 of the Penal Code, that a jury or court mght find a defendant guilty of a lesser offense necessarily included in the offense charged. If the offense charged is a misdemeanor under Penal Code Section 1425, the justice court has jurisdiction. But where,

as here, the offense charged is a felony, jurisdiction is in the Superior Court.

Appellant's contention that his conviction and sentence violated due process of law is likewise without merit. He argues that a statute so vague or indefinite as to fail to give notice of what acts should be punished, violates accused's rights to procedural due process; that a penal statute must set up ascertainable standards so that men of common intelligence are not required to guess at its meaning, either as to persons within the scope of the act, or as to the applicable tests to ascertain guilt; that the essential elements of "due process of law" are notice and an opportunity to be heard; that a defendant does not have notice of what necessarily included offenses are claimed to be embraced in the charge until the court submits the case to the jury by instructions; hence that a defendant is unable to plan his defense with certainty. However, the offense charged herein is a felonious assault by means of force likely to produce great bodily injury (Penal Code, Sec. 245) and the included offense is an unlawful attempt coupled with a present ability to commit a violent injury upon the person of another. (Penal Code, Sec. 240.) An acquittal of the higher offense is a bar to a subsequent prosecution for any lower offense necessarily included in it and a conviction of any lower offense necessarily included in the higher, is a bar to a subsequent prosecution for such higher offense. (People v. McDaniels, 137 Cal. 192, 199.) Under the circumstances presented by the record before us it is apparent that the defendant was not required to guess as to the meaning of the charge and was afforded notice and full opportunity to be heard. It does not appear that he was unable to plan his defense

with certainty. As was said in Barbeau v. United States, 193 F. 2d 945, 947:

"The purpose of specificity in the indictment is, primarily, to give the defendant the benefit of his Constitutional right to be informed of the nature and cause of the accusation against him and, secondarily, to protect him from subsequent prosecution for the same offense. These are practical requirements and the indictment need contain no magic formulae in order to succeed."

Finally, it is argued that the court erred in refusing to permit the witness Hughes to testify and in limiting the cross-examination of the complaining witness. These arguments are without merit. The testimony sought to be introduced by the witness Hughes related to the activities of Mrs. Spreckels between September 23 and October 3, 1953 (after the date of the assault) and was offered to rebut her testimony that she was then suffering constant headaches and neck pains and from double vision. The trial court ruled that such testimony had so little probative value as to not be material to the trial of the case and we find no reversible error in the ruling sustaining the objection to the offered testimony. As was said in People v. Monson, 102 Cal. App. 2d 308, 313:

"In order to predicate error on sustaining objections to a question it must appear to be relevant and material and its materiality must be so patent that injury will be presumed from the adverse ruling."

On cross-examination of Mrs. Spreckels, counsel for defendant sought to show that the complaining witness was attending parties and staying out late at night from September 22nd through October 3rd for the purpose of contradicting her testimony elicited upon direct examination that she was still suffering, at the time of trial, severe headaches and double vision. The district attorney objected and the court sustained his objection to this line of testimony. Appellant argues that the court erred in limiting cross-examination of the complaining witness as to these matters. However, from an examination of the record it does not appear to us that the defendant was prejudiced by the exclusion of any material evidence. It is the duty of the trial judge to restrict the cross-examination of witnesses to reasonable limitations (People v. Navarro, 135 Cal. App. 535, 540) and we find no prejudicial error in the ruling made by the trial court.

Judgment and order affirmed.

MUSSELL, *J.*

We concur:

BARNARD, *P. J.*

GRIFFIN, *J.*

APPENDIX B.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. ADOLPH B. SPRECKELS, JR., Defendant and Appellant.

4 Crim. No. 965.

Judgment and order affirmed.

MUSSELL, *J.*

We concur:

BARNARD, *P. J.*

GRIFFIN, *J.*

(Judgment of District Court of Appeal, Fourth Appellate District, State of California, as appears in court minutes of May 25, 1954)

APPENDIX C.

THE CONVICTION AND SENTENCE OF APPELLANT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. (R. A. 15A.)

The judgment and conviction of appellant cannot be sustained under Section 1159 of the Penal Code. When the legislature reenacted Section 1159 of the Penal Code in 1951, it could not circumvent the due process of law by permitting a conviction for a misdemeanor in the Superior Court which had no jurisdiction over misdemeanors. The Fourteenth Amendment to the Federal Constitution has rendered the legislatures of the States as incompetent as Congress to enact laws which will deprive individuals of their liberty without due process. (R. A. 17.)

APPENDIX D.

The Conviction and Sentence of Petitioner Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

To deprive a defendant of his liberty as a result of a conviction for a misdemeanor, by a court which had neither power nor jurisdiction to try the defendant for such misdemeanor, is surely a violation of the due process of law provisions of both the California and United States Constitutions.

The judgment and conviction of appellant cannot be sustained under Section 1159 of the Penal Code. When the legislature reenacted Section 1159 of the Penal Code in 1951, it could not circumvent the due process of law by permitting a conviction for a misdemeanor in the Superior Court which had no jurisdiction over misdemeanors. The Fourteenth Amendment to the Federal Constitution has rendered the legislatures of the States as incompetent as Congress to enact laws which will deprive individuals of their liberty without due process. (R. A. 30A.)